



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2017-0699; FRL-9971-86-Region 6]

#### **Approval and Promulgation of Implementation Plans; Arkansas; Revisions to the Definitions for Arkansas Plan of Implementation for Air Pollution Control: Volatile Organic Compounds**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a portion of the revision to the Arkansas State Implementation Plan (SIP) submitted by Arkansas Department of Environmental Quality (ADEQ) on March 24, 2017. The revision updates the definition of “volatile organic compounds” (VOC). Specifically, the submitted revision will incorporate the EPA’s latest definition of VOC on the basis that these compounds make negligible contribution to tropospheric ozone formation. This action is being taken pursuant to the Clean Air Act (CAA or Act).

**DATES:** This direct final rule is effective **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless EPA receives relevant adverse comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives relevant adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2017-0699, at <http://www.regulations.gov> or via email to [salem.nevine@epa.gov](mailto:salem.nevine@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Nevine Salem, (214) 665-7222, [salem.nevine@epa.gov](mailto:salem.nevine@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Ms. Nevine Salem, (214) 665-7222, [salem.nevine@epa.gov](mailto:salem.nevine@epa.gov). To inspect the hard copy materials, please schedule an appointment with Ms. Nevine Salem or Mr. Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

## **I. Background**

Tropospheric ozone, commonly known as smog, is formed when VOCs and nitrogen oxides (NO<sub>x</sub>) react in the atmosphere in the presence of sunlight. Because of the harmful health effects of ozone, the EPA and state governments limit the amount of VOCs that can be released into the atmosphere. VOCs are those organic compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate) that form ozone through atmospheric photochemical reactions. Different VOCs have different levels of reactivity. That is, they do not react to form ozone at the same speed or do not form ozone to the same extent. Some VOCs react slowly or form less ozone; therefore, changes in their emissions have less and, in some cases, very limited effects on local or regional ozone pollution episodes. It has been the EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory VOC definition so as to focus VOC control efforts on compounds that do significantly increase ozone concentrations. The EPA also believes that exempting such compounds creates an incentive for industry to use negligibly reactive compounds in place of more highly reactive compounds that are regulated as VOCs.

EPA periodically revises the list of negligibly reactive compounds to add or delete VOCs from regulation on the basis that these compounds make a negligible contribution to tropospheric ozone formation. Section 302(s) of the CAA specifies that the EPA has the authority to define the meaning of “VOC,” and hence what compounds shall be treated as VOCs for regulatory purposes. The policy of excluding negligibly reactive compounds from the VOC definition was first set forth in the “Recommended Policy on Control of Volatile Organic Compounds” (42 FR

35314, July 8, 1977) and was supplemented most recently with the “Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans” (Interim Guidance) (70 FR 54046, September 13, 2005). The EPA uses the reactivity of ethane as the threshold for determining whether a compound has negligible reactivity. Compounds that are less reactive than, or equally reactive to, ethane under certain assumed conditions may be deemed negligibly reactive and therefore suitable for exemption from the regulatory definition of VOC. Compounds that are more reactive than ethane continue to be considered VOCs for regulatory purposes and therefore are subject to control requirements. The selection of ethane as the threshold compound was based on a series of smog chamber experiments that underlay the 1977 policy.

The EPA lists compounds that it has determined to be negligibly reactive in its regulations as being excluded from the definition of VOC. (40 CFR 51.100(s)). The Arkansas submittal will update its SIP to be consistent with current EPA definitions to provide clarity and consistency for owners and operators of sources subject to ADEQ rules regarding VOC control.

The specific organic compounds that will be excluded from ADEQ’s definition of VOC that is in the SIP with this revision include: *trans*-1,3,3,3-tetrafluoropropene; 2,3,3,3-tetrafluoropropene<sup>1</sup>; HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236ca12); HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338pcc13); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130(or150 or 180))<sup>2</sup>; *trans* 1-chloro-3,3,3-trifluoroprop-1-ene<sup>3</sup>; and 2-amino-2-methyl-1-propanol<sup>4</sup>.

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<sup>1</sup> See 78 FR 62451, October 22, 2013 – Exclusion of *trans*-1&2, 3,3,3,-tetrafluoropropene

<sup>2</sup> See 78 FR 9823, February 12, 2013 – Exclusion of group of four Hydrofluoropolyethers (HPEPs)

<sup>3</sup> See 78 FR 53029, August 28, 2013 – Exclusion of *trans* 1-Chloro-3,3,3 trifluoroprop-1-ene

<sup>4</sup> See 79 FR 17037, March 27, 2014 – Exclusion of 2-amino-2-methyl-1-propanol

## II. The EPA's Evaluation

On March 24, 2017, ADEQ submitted SIP revisions to EPA for review and approval. A portion of the submitted revision update the definition of VOC found at the Arkansas Pollution Control & Ecology Commission's (Commission or APC&EC) Regulation No.19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control. Specifically, the revision adds *trans*-1,3,3,3-tetrafluoropropene; 2,3,3,3-tetrafluoropropene; HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236ca2); HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338pcc13); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130(or150 or 180)); *trans* 1-chloro-3,3,3-trifluoroprop-1-ene; and 2-amino-2-methyl-1-propanol to the list of compounds excluded from the VOC definition on the basis that these compounds make a negligible contribution to the tropospheric ozone formation. These changes are consistent with EPA's definition of VOC at 40 CFR 51.100(s), section 110 of the CAA and meet the regulatory requirements pertaining to the SIPs.<sup>5</sup> Pursuant to CAA section 110(I), the Administrator shall not approve a revision of a plan if the revisions would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the Act. The revision to Arkansas Regulation No.19, Chapter 2: Definitions, is approvable under section 110(I) because it reflects changes to federal regulations based on findings that the aforementioned compounds are negligibly reactive.<sup>6</sup>

## III. Final Action

Pursuant to section 110 of the CAA, EPA is approving the revision to the Arkansas SIP updating the VOC definition. EPA has evaluated Arkansas' March 24, 2017, submittal and has

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<sup>5</sup> See Interim Guidance on Control of Volatile Organic Compounds in Ozone Implementation Plans. (70 FR 54046, September 13, 2005)

<sup>6</sup> Please see footnotes 1 through 4 in this rulemaking.

determined that it meets the applicable requirements of the CAA and EPA regulations and consistent with EPA policy.

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revisions to the Arkansas regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 6 Office (please contact Ms. Nevine

Salem for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation (62 FR 27968, May 22, 1997).

## **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small

governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take



effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Samuel Coleman was designated the Acting Regional Administrator on December 15, 2017 through the order of succession outlined in Regional Order R6-1110.13, a copy of which is included in the docket for this action.

**List of Subjects in 40 CFR part 52**

Environmental protection, Air pollution control, Incorporation by reference, intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 15, 2017.

**Samuel Coleman,**  
*Acting Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

**Part 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart E Arkansas**

2. In §52.170, in paragraph (c), the table titled “EPA-Approved Regulations in the Arkansas SIP” is amended by revising the entry for Regulation No.19, Chapter 2, to read as follows:

**§52.170 Identification of plan.**

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2. (c) \* \* \*

**EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP**

State citation	Title/subject	State submittal/ effective date	EPA approval date	Explanation
<b>Regulation No. 19: Regulations of the Arkansas Plan of Implementation for Air Pollution Control</b>				
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<b>Chapter 2: Definitions</b>				
Chapter 2	Definitions	3/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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[FR Doc. 2017-27458 Filed: 12/20/2017 8:45 am; Publication Date: 12/21/2017]